



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Sénát for its Opinion on the proposal for a regulation on the access of third-country goods and services to the Union's internal market in public procurement {COM(2012) 124 final} and apologises for the delay in replying.

The Commission shares the Sénat's view that there is a disproportion between the openness of the markets of the EU on the one hand and the inaccessibility of the public procurement market of its most important business partners for European companies on the other hand.

The Commission proposal is thus based on three principles:

- The default rule of the EU's external public procurement policy is openness;*
- Goods, services and companies covered by the EU international commitments (Government Procurement Agreement – GPA, Free Trade Agreements – FTAs) have a legally guaranteed access to the EU public procurement market;*
- Goods, services and companies not covered by the EU international commitments may be subject to restrictive measures.*

The first principle confirms the current EU position in the area of public procurement: competition helps public authorities to get best value for money and helps our companies to remain amongst the most competitive in the world. Obtaining best value for money is particularly important in these times of economic crisis and budgetary constraints.

The second principle is derived from international law. The EU will strictly abide by what has been agreed with our trading partners.

*Mr Milan ŠTĚCH
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The third principle clarifies that goods and services not covered by international commitments of the EU are not granted the same status as covered ones. According to the proposal of the Commission restrictive measures should be the exception and could only be taken in two well-defined cases, at either the initiative of the Commission or, with authorization of the Commission, of contracting authorities. Both options are complementary. The Commission would target the most important protectionist policies of our trading partners. The contracting authorities would deal with all non-covered goods and services. Without the Commission intervention possibility, the EU could not target important protectionist policies in third countries. And without the contracting authorities' possibility to take restrictive measures, the EU would have a fully open public procurement market which would make no distinction between covered and non-covered goods and services, unless the Commission would apply a restrictive measure.

The expected impact of this proposal is based on the combination of both instruments: the EU could offer legally guaranteed access to our market with treatment equal to EU goods and services in its international negotiations to its trading partners. Indeed, in the absence of an international agreement, the default rule of openness would apply, but third countries would have no legal guarantee on access and their goods and service could at any time be excluded in tendering procedures ("grey zone"). Moreover, the Commission could – in serious cases of protectionist policies – start an investigation and ultimately take restrictive measures if no solution could be found. This situation would stimulate trading partners to negotiate (further) market access with the EU to get legal guarantees for market access.

Since restrictive measures would be the exception under the proposal and openness the default rule, the Commission believes that the risk of commercial retaliation is limited. Moreover, restrictive measures have to be reasoned and based on the existence of protectionist policies in the third country concerned. Lastly, the EU will strictly comply with its international obligations. The Commission is not aware of any third country which would have such an open market and transparent system.

As regards the involvement of Member States, the Commission would like to underline that Member States authorities would decide whether or not they make use of the possibility to apply restrictive measures. The Commission's role would only be to ensure a consistent approach throughout the Union, with the aim to help building a common commercial policy. Member States would also have an important role to play as they could ask the Commission to start an investigation into alleged protectionist policies applied by third countries and provide evidence. Before taking any decision on whether there is or not such a policy in place in a third country, the Commission should provide a detailed analysis of the situation in the third country concerned. This should be the basis for discussion with Member States on the steps to be taken. The Commission proposed, in line with the Comitology Regulation 182/201, the procedure that provides the most extensive involvement of Member States (see Article 17 paragraph 2 of the proposal).

Finally, on the rules of origin of goods and services, the Commission has announced that it will issue easy to use and regularly updated guidance on the application of the rules of origin (recital 9 of the proposal). This guidance could take the form of an on-line tool that will ensure transparency and full compatibility with the international obligations of the EU.

The Commission hopes that these clarifications address the comments and concerns raised in the opinion of the Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*